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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA
TUCSON DIVISION**

12 Center for Biological Diversity,)
13)
14 Plaintiff,)) Case No.: 4:23-cv-00113-JCH
15 v.))
16 U.S. Fish and Wildlife Service;)) **STIPULATED SETTLEMENT**
17 Martha Williams, in her official)) **AGREEMENT**
18 capacity as Director of the U.S. Fish)
19 and Wildlife Service; and Debra)
20 Haaland, in her official capacity as)
Secretary of the U.S. Department of)
the Interior,)
Defendants.

1 This Stipulated Settlement Agreement (“Agreement”) is entered into by and
2 between the Center for Biological Diversity (“Plaintiff”) and the United States Fish and
3 Wildlife Service (“FWS”), Martha Williams, in her official capacity as Director of the
4 FWS, and Debra Haaland, in her official capacity as Secretary of the Department of
5 Interior (collectively, “Federal Defendants” and, with Plaintiff, “the Parties”), who, by
6 and through their undersigned counsel, state as follows:
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8 WHEREAS, the Endangered Species Act (“ESA”) provides that, to the maximum
9 extent practicable, within 90 days of receiving a listing petition, the Secretary shall make
10 a finding as to whether the petition presents substantial scientific or commercial
11 information indicating that the petitioned action may be warranted, 16 U.S.C. §
12 1533(b)(3)(A) (“90-day finding”);
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14 WHEREAS, the ESA provides that within 12 months after receiving a petition that
15 is found to present substantial information indicating the petitioned action may be
16 warranted, the Secretary shall make a finding as to whether the petitioned action is not
17 warranted, warranted but precluded, or warranted, 16 U.S.C. § 1533(b)(3)(B) (“12-month
18 finding”);
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20 WHEREAS, the ESA provides that within one year of determining that listing a
21 species is warranted and publishing a proposed rule listing a species, the Secretary shall
22 publish in the Federal Register a final regulation implementing that determination or
23 withdrawing the proposed rule, 16 U.S.C. § 1533(b)(6) (“final listing determination”);
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25 WHEREAS, the ESA provides that, to the maximum extent practicable, the
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1 Secretary shall designate critical habitat for a species concurrent with a final listing
2 determination that a species is endangered or threatened, unless the Secretary determines
3 that designation of critical habitat “would not be prudent,” or otherwise that critical habitat
4 is “not determinable” at the time of a final listing determination that a species is
5 endangered or threatened, in which case the Secretary may designate critical habitat within
6 one year of such final listing determination, 16 U.S.C. § 1533(a)(3)(A), §
7 1533(b)(6)(C)(ii);
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10 WHEREAS, under 16 U.S.C. § 1533(b)(7) and 50 C.F.R. § 424.20, FWS has the
11 discretion to issue temporary listings in response to situations FWS determines to be
12 emergencies posing a significant risk to the well-being of any species;

13 WHEREAS, on March 7, 2023, Plaintiff filed a Complaint in the above-captioned
14 case, Dkt. 1, to compel FWS to complete certain actions under the ESA by dates certain
15 for twelve species: final listing determinations for alligator snapping turtle (*Macrochelys*
16 *temminckii*), Suwannee alligator snapping turtle (*Macrochelys suwanniensis*), Pearl River
17 map turtle (*Graptemys pearlensis*), Wright’s marsh thistle (*Cirsium wrightii*), bracted
18 twistflower (*Streptanthus bracteatus*), round hickorynut (*Obovaria subrotunda*), Big
19 Creek crayfish (*Faxonius peruncus*), St. Francis River crayfish (*Faxonius quadruncus*); a
20 90-day finding for least chub (*Iotichthys phlegethonitis*); a 12-month finding for Fish Lake
21 Valley tui chub (*Siphateles bicolor* ssp. 4); finalization of critical habitat designation for
22 slickspot peppergrass (*Lepidium papilliferum*); and designation of critical habitat for
23 Barrens topminnow (*Fundulus julisia*);
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1 WHEREAS, FWS has since taken actions with respect to seven of these species:
2 round hickorynut, 88 Fed. Reg. 14,794 (March 9, 2023); bracted twistflower, 88 Fed. Reg.
3 21,844 (April 11, 2023); Wright's marsh thistle, 88 Fed. Reg. 25,208 (April 23, 2023);
4 Big Creek and St. Francis River Crayfish, 88 Fed. Reg. 25,512 (April 27, 2023); slickspot
5 peppergrass, 88 Fed. Reg. 28,874 (May 4, 2023); and least chub, 88 Fed. Reg. 55,991
6 (August 17, 2023);
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8 WHEREAS, as a result of these post-Complaint actions taken by FWS, the Parties
9 agree that the claims in the Complaint as to these seven species are moot, and that
10 Plaintiff's only live claims relate to five species: Barrens topminnow, Suwannee alligator
11 snapping turtle, alligator snapping turtle, Pearl River map turtle, and Fish Lake Valley tui
12 chub;
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14 WHEREAS, the Parties, through their authorized representatives, and without any
15 final adjudication of the issues of fact or law with respect to Plaintiff's claims, have
16 negotiated a settlement that they consider to be a just, fair, adequate, and equitable
17 resolution of the disputes set forth in Plaintiff's Complaint;
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19 WHEREAS, the Parties agree that settlement of this action in this manner is in the
20 public interest and is an appropriate way to resolve Plaintiff's Complaint;
21
22 NOW, THEREFORE, the Parties hereby stipulate and agree as follows:

23 1. On or before June 20, 2024, FWS will submit to the Office of the Federal Register
24 a final listing determination for the Suwannee alligator snapping turtle, pursuant to the
25 ESA, 16 U.S.C. § 1533(b)(6).
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1 2. On or before June 27, 2024, FWS will submit to the Office of the Federal Register
2 a proposed rule designating critical habitat for the Barrens topminnow, pursuant to the
3 ESA, 16 U.S.C. § 1533(a)(3)(A).

4 3. On or before July 11, 2024, FWS will submit to the Office of the Federal Register
5 a final listing determination for the Pearl River map turtle, pursuant to the ESA, 16 U.S.C.
6 § 1533(b)(6).

7 4. On or before December 15, 2024, FWS will submit to the Office of the Federal
8 Register a final listing determination for the alligator snapping turtle pursuant to the ESA,
9 16 U.S.C. § 1533(b)(6).

10 5. On or before May 17, 2025, FWS will submit to the Office of the Federal Register
11 a 12-month finding as to whether the listing of the Fish Lake Valley tui chub as threatened
12 or endangered is (a) not warranted; (b) warranted; or (c) warranted but precluded by other
13 pending proposals, pursuant to the ESA, 16 U.S.C. § 1533(b)(3)(B).

14 6. The Order entering this Agreement may be modified by the Court upon good cause
15 shown, consistent with the Federal Rules of Civil Procedure, by written stipulation
16 between the Parties filed with and approved by the Court, or upon written motion filed by
17 one of the Parties and granted by the Court. In the event that either party seeks to modify
18 the terms of this Agreement, including the deadlines specified in Paragraphs 1 through 5,
19 or in the event of a dispute arising out of or relating to this Agreement, or in the event that
20 either party believes that the other party has failed to comply with any term or condition
21 of this Agreement, the party seeking the modification, raising the dispute, or seeking
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1 enforcement shall provide the other party with notice of the claim or modification. The
2 Parties agree that they will meet and confer (either telephonically or in person) at the
3 earliest possible time in a good-faith effort to resolve the claim before seeking relief from
4 the Court. If the Parties are unable to resolve the claim themselves, either party may seek
5 relief from the Court.

7 7. In the event that FWS fails to meet the deadlines specified in Paragraphs 1 through
8 5 and has not sought to modify them, Plaintiff's first remedy shall be a motion to enforce
9 the terms of this Agreement, after following the dispute resolution procedures described
10 above. This Agreement shall not, in the first instance, be enforceable through a proceeding
11 for contempt of court.

13 8. Plaintiff reserves the right to request attorneys' fees and costs from Federal
14 Defendants pursuant to Section 11(g) of the ESA, 16 U.S.C. § 1540(g), and Federal
15 Defendants reserve their right to contest Plaintiff's entitlement to recover fees and the
16 amount of any such fees and do not waive any objection or defense that they may have to
17 any fees and costs that Plaintiff requests. The Parties agree to the following schedule for
18 addressing attorneys' fees and costs:
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21 a. Within ninety (90) days of the entry of the order by this Court approving
22 this Agreement, the Parties will notify the Court whether they have reached
23 a settlement as to the payment of Plaintiff's attorneys' fees and costs by
24 Federal Defendants.

26 b. If the Parties have not reached agreement on attorneys' fees and costs at the
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1 time that they provide this notice to the Court, Plaintiff may move within
2 thirty (30) days of that date for the Court to award attorneys' fees and costs.
3 Briefing and adjudication of Plaintiff's motion for attorneys' fees and costs
4 and Federal Defendants' opposition thereto will then proceed as provided in
5 Local Civ. R. 7.2. In the event that Plaintiff files such a motion, Federal
6 Defendants reserve the right to contest entitlement to and/or the
7 reasonableness of the amount of Plaintiff's claims to attorneys' fees and
8 costs, including the hourly rates and number of hours billed.
9

10 9. This Agreement requires only that Federal Defendants take the actions specified in
11 Paragraphs 1 through 5. No provision of this Agreement shall be interpreted as, or
12 constitute, a commitment or requirement that Federal Defendants take action in
13 contravention of the ESA, the Administrative Procedure Act ("APA"), or any other law
14 or regulation, either substantive or procedural. Nothing in this Agreement shall be
15 construed to limit or modify the discretion accorded to Federal Defendants by the ESA,
16 APA, or general principles of administrative law with respect to the procedures to be
17 followed in making any determination required herein, or as to the substance of any
18 determinations made pursuant to Paragraph 1 through Paragraph 5 of the Agreement. To
19 challenge any determinations issued pursuant to Paragraph 1 through Paragraph 5,
20 Plaintiff must file a separate action. Federal Defendants reserve the right to raise any
21 applicable claims or defenses to such challenges.
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23 10. No part of this Agreement shall have precedential value in any litigation or in
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representations before any court or forum or in any public setting.

11. Nothing in this Agreement shall be construed or offered as evidence in any proceeding as an admission or concession of any wrongdoing, liability, or any issue of fact or law concerning the claims settled under this Agreement or any similar claims brought in the future by any other party. Except as expressly provided in this Agreement, none of the Parties waive or relinquish any legal rights, claims, or defenses they may have. This Agreement is executed for the purpose of settling Plaintiff's Complaint, and nothing herein shall be construed as precedent having preclusive effect in any other context.

12. Nothing in this Agreement shall be interpreted as, or shall constitute, a requirement that Federal Defendants are obligated to pay any funds exceeding those available or take any action in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable appropriations law or regulation.

13. The Parties agree that this Agreement was negotiated in good faith and that it constitutes a settlement of claims that were disputed by the Parties. By entering into this Agreement, none of the Parties waive any legal rights, claims, or defenses except as expressly stated herein. This Agreement contains all of the terms of agreement between the Parties concerning the Complaint and is intended to be the final and sole agreement between the Parties with respect thereto. The Parties agree that any prior or contemporaneous representations or understanding not explicitly contained in this written Agreement, whether written or oral, are of no further legal or equitable force or effect.

14. The undersigned representatives of each party certify that they are fully authorized

1 by the party or parties they represent to agree to the terms and conditions of this
2 Agreement and do hereby agree to the terms herein. Further, each party, by and through
3 its undersigned representative, represents and warrants that it has the legal power and
4 authority to enter into this Agreement and bind itself to the terms and conditions contained
5 in this Agreement.

7 15. The terms of this Agreement shall become effective upon entry of an Order by the
8 Court ratifying this Agreement.

9 16. Upon adoption of this Agreement by the Court, all counts of Plaintiff's Complaint
10 and all claims asserted therein shall be dismissed with prejudice. Notwithstanding the
11 dismissal of this action, however, the Parties hereby stipulate and respectfully request that
12 the Court retain jurisdiction to oversee any motion for attorneys' fees and costs,
13 compliance with the terms of this Agreement, and to resolve any motions to modify such
14 terms, until Federal Defendants satisfy their obligations under this Agreement. *See*
15 *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375 (1994).

16 Dated: April 25, 2024

17 Respectfully Submitted,

18 TODD KIM,
19 Assistant Attorney General
20 S. JAY GOVINDAN, Section Chief
21 NICOLE M. SMITH, Assistant Section Chief

22 */s/ Joseph W. Crusham*
23 Joseph W. Crusham, Trial Attorney
24 CA Bar No. 324764

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Attorney for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 25, 2024, I filed the foregoing Stipulated Settlement Agreement electronically through the CM/ECF system, which caused all parties or counsel of record to be served by electronic means, as reflected on the Notice of Electronic Filing.

/s/ Joseph W. Crusham

Joseph W. Crusham

U.S. Department of Justice